# SUPREME COURT OF THE UNITED STATES.

No. 139.—October Term, 1927.

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| Quaker City Cab Company, Plaintiff in Error, vs. Commonwealth of Pennsylvania. | In Error to the Supreme Court of Pennsylvania. |

[May 28, 1928.]

Mr. Justice Butler delivered the opinion of the Court.

Judgment was entered in the Court of Common Pleas of Dauphin County, Pennsylvania, in favor of the Commonwealth for "gross receipts taxes for the six months ending the 31st day of December, 1923", amounting with interest and commission to $6,049.94. The tax is claimed under § 23 of an Act of June 1, 1889, P. L. 420, 431. The provisions here material are printed in the margin.* The gross receipts taxed were derived by plaintiff in error from the use of its motor vehicles for the transportation within Pennsylvania of persons and their luggage. Plaintiff in error contended that if applied to such receipts the section violates the equal protection clause of the Fourteenth Amendment. The highest court of the State upheld the Act and affirmed the judgment. 287 Pa. 161.

Plaintiff in error is a New Jersey corporation authorized to do business in Pennsylvania as a foreign corporation; and, since June 1, 1917, it has carried on a general taxicab business in Philadelphia. The Supreme Court held that the section taxes gross receipts from the operation of taxicabs. It provides that

*"That every ... transportation company, ... now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other State or by the United States or any foreign government, and doing business in this Commonwealth, and owning [or] operating ... any railroad ... or other device for the transportation of freight or passengers or oil ... shall pay to the state treasurer a tax of eight mills upon the dollar upon the gross receipts of said corporation ... received from passengers and freight traffic transported wholly within this State ..."

every transportation company, whether incorporated in Pennsylvania or elsewhere, owning or operating any device for the transportation of passengers, "shall pay to the state treasurer a tax of eight mills upon the dollar upon the gross receipts of said corporation . . . received from passengers . . . transported wholly within this State . . ."

Plaintiff in error was subject to competition in its business by individuals and partnerships operating taxicabs. The Act does not apply to them, and no tax is imposed on their receipts. Corporations operating taxicabs are not exempted from any of the taxes imposed on natural persons carrying on that business. And every such corporation, whether domestic or foreign, pays a capital stock tax of five mills on the actual value of its capital stock and a bonus of one third of one per cent on the par value of all stock issued if it be a domestic corporation, and a like rate on its capital employed in Pennsylvania if it be a foreign corporation. Act of July 22, 1913, P. L. 901, § 1; Act of May 3, 1909, P. L. 189, § 1; Act of May 8, 1901, P. L. 150. The Supreme Court said that it is immaterial whether individuals engaged in a like taxicab business are subject to the tax here involved and that corporations may be placed in a class separate from individuals and so taxed.

The equal protection clause extends to foreign corporations within the jurisdiction of the State and safeguards to them protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. *Kentucky* v. *Paramount Exch.*, 262 U. S. 540, 550. The equal protection clause does not detract from the right of the State justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, "but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation." *Power Co.* v. *Saunders*, 274 U. S. 490, 493. It is established that a corporation, by seeking and obtaining permission to do business in a State does not thereby become bound to comply with, or estopped from objecting to, the enforcement of its enactments that conflict with the Constitution of the United States. The right to withhold from a foreign corporation permission to do local business therein does not enable the State to require such a

orporation to surrender the protection of the federal Constitution. *Power Co.* v. *Saunders, supra*, 497. *Hanover Insurance Co.* v. *Harding*, 272 U. S. 494, 507. *Frost* v. *Railroad Commission*, 271 U. S. 583, 593 et seq. *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, 434. *Western Union Tel. Co.* v. *Foster*, 247 U. S. 105, 114. *Looney* v. *Crane Co.*, 245 U. S. 178, 188. *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 203.

The section declares the imposition to be a tax "upon gross receipts". And the Supreme Court said: "The real subject of the tax is the gross receipts of a company engaged in the transportation of freight or passengers . . . ". That statement is not affected by a later expression referring to the tax as a "state tax on business or income" in contrast with a "local tax on property" such as hacks, cabs and other vehicles. The variation of language used by the court evidently is intended to be, and is, without significance. The words of the section are too plain to require explanation. They could not reasonably be given any other meaning. But, in any event, a characterization of the tax by the state court is not binding here. *Louisville Gas & Electric Co.* v. *Coleman*, 276 U. S. —. *St. Louis Compress Co.* v. *Arkansas*, 260 U. S. 346, 348. There is no controversy as to the application of the tax. Plaintiff in error assumes that the section covers its gross receipts, as held by the state court, but insists that the section is invalid because it does not extend to like receipts of natural persons and partnerships. No doubt there are situations in which, as appears in *Cudahy Packing Co.* v. *Minnesota*, 246 U. S. 450, and other cases, a percentage of gross earnings may be taken as a tax on property used in the business and properly may be deemed not to be a tax or burden on such earnings. But the practical operation of the section is to be regarded, and it is to be dealt with according to its effect. *Frick* v. *Pennsylvania*, 268 U. S. 473. *Panhandle Oil Co.* v. *Mississippi*, 276 U. S. —. Here the tax is one that can be laid upon receipts belonging to a natural person quite as conveniently as upon those of a corporation. It is not peculiarly applicable to corporations as are taxes on their capital stock or franchises. It is not taken in lieu of any other tax or used as a measure of one intended to fall elsewhere. It is laid upon and is to be considered and tested as a tax on gross receipts; it is specifically that and nothing else.

In effect § 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed while those

of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification to be consistent with the equal protection clause must be based on a real and substantial difference having reasonable relation to the subject of the legislation. *Power Co.* v. *Saunders*, *supra*. No decision of this Court gives support to such a classification. In no view can it be held to have more than an arbitrary basis. As construed and applied by the state court in this case, the section violates the equal protection clause of the Fourteenth Amendment. *See The Railroad Tax Cases*, 13 Fed. 722. *County of Santa Clara* v. *Southern Pacific R. R. Co.*, 18 Fed. 385. *Northern Pacific R. Co.* v. *Walker*, 47 Fed. 681. The tax cannot be sustained.

*Judgment reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

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No. 139.—October Term, 1927.

Quaker City Cab Company, Plaintiff in Error,
vs.
Commonwealth of Pennsylvania.

In Error to the Supreme Court of Pennsylvania.

[May 28, 1928.]

Mr. Justice Holmes.

I think that the judgment should be affirmed. The principle that I think should govern is the same that I stated in *Louisville Gas & Electric Co.* v. *Coleman*, April 30, 1928. Although this principle was not applied in that case I do not suppose it to have been denied that taxing acts like other rules of law may be determined by differences of degree, and that to some extent States may have a domestic policy that they constitutionally may enforce. *Quong Wing* v. *Kirkendall*, 223 U. S. 59. If usually there is an important difference of degree between the business done by corporations and that done by individuals, I see no reason why the larger businesses may not be taxed and the small ones disregarded, and I think it would be immaterial if here and there exceptions were found to the general rule. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 158, *et seq.* *Citizens Telephone Co.* v. *Fuller*, 229 U. S. 322. *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 373, 393. *Miller* v. *Wilson*, 236 U. S. 373, 384. *Armour & Co.* v. *North Dakota*, 240 U. S. 510, 517. Furthermore if the State desired to discourage this form of activity in corporate form and expressed its desire by a special tax I think that there is nothing in the Fourteenth Amendment to prevent it.

# SUPREME COURT OF THE UNITED STATES.

No. 139.—October Term, 1927.

Quaker City Cab Co., Plaintiff in Error, vs. Commonwealth of Pennsylvania. | On Writ of Error to the Supreme Court of Pennsylvania.

[May 28, 1928.]

Mr. Justice Brandeis, dissenting.

It has been the consistent policy of Pennsylvania since 1840 to subject businesses conducted by corporations to heavier taxation than like businesses conducted by individuals.[1] It has likewise been the consistent policy of the State since 1864 to subject some kinds of businesses conducted by corporations to heavier taxation than other businesses conducted by corporations.[2] Pursuant to this policy, the legislature of Pennsylvania said, in 1889, upon public service corporations furnishing transportation for hire, a gross receipts tax of eight mills on each dollar of gross receipts earned wholly within the State. Act of June 1, 1889, P. L. 1889, pp. 420, 431 (Pa. Stat. 1920, § 20388). That statute has remained unchanged so far as affects the question here involved.[3] It applies equally to every cor-

[1] Pennsylvania was the first state to adopt a general corporation tax. P. L. 1839-1840, p. 432. In 1868 the tax was extended to foreign corporations. P. L. 1868, p. 108. The courts of Pennsylvania have regularly upheld the power of the Legislature, under the state and the Federal Constitution, to place heavier tax burdens on corporations than on individuals. See Kittanning Coal Co. v. Commonwealth, 79 Pa. St. 100; Commonwealth v. Delaware Division Canal Co., 122 Pa. St. 594; Commonwealth v. Germania Brewing Co., 145 Pa. St. 83; Commonwealth v. National Oil Co., 157 Pa. St. 516; Commonwealth v. Sharon Coal Co., 164 Pa. St. 384, 394.

[2] P. L. 1864, p. 218; P. L. 1866, p. 82; P. L. 1867, p. 1103; P. L. 1877, p. 6; P. L. 1879, p. 112; P. L. 1889, p. 420; P. L. 1925, pp. 702, 706.

[3] So far as is material to the present case, the tax goes back to the Act of March 20, 1877, P. L. 6. It was that act, as amended by the Act of June 7, 1879, P. L. 112, which was before this Court in Philadelphia & Southern Mail S. S. Co. v. Pennsylvania, 122 U. S. 326. The Act of June 1, 1889, P. L. 420, 431, amended the earlier legislation so as to remove its repugnance to the commerce clause.

poration engaged in the same kind of business, and makes no discrimination between foreign and domestic corporations. But neither this specific tax, nor any equivalent tax, is laid upon individuals or partnerships engaged in the same business. Nor is this tax or an equivalent laid upon corporations which supply certain other public services.

The Supreme Court of the State has construed this statute as applicable to all taxicab corporations; and has held the Quaker City Cab Company, a foreign corporation doing an intrastate business in Pennsylvania since the year 1917, liable for the taxes accrued on that business for the last six months of 1923, which was agreed on as a test period. The Company claims that the statute as construed and applied violates the Federal Constitution. There is no contention that it violates either the commerce clause or the due process clause. The claim is that it denies equal protection of the laws; and the contention is rested specifically upon the ground that the exaction "is not a tax peculiar to corporations."

As the statute applies equally to domestic and to foreign corporations, cases like *Southern Ry. Co.* v. *Greene*, 216 U. S. 400; *Kentucky Finance Corporation* v. *Paramount Auto Exchange*, 262 U. S. 544; *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494; and *Power Manufacturing Co.* v. *Saunders*, 274 U. S. 490, have no application. And no claim is made that the Federal Constitution prevents a State from taxing corporations engaged in one class of business more heavily than those engaged in another. *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114; *Brown-Forman Co.* v. *Kentucky*, 217 U. S. 563; *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245; *Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 172. The fundamental question requiring decision is a general one. Does the equality clause prevent a State from imposing a heavier burden of taxation upon corporations engaged exclusively in intrastate commerce, than upon individuals engaged under like circumstances in the same kind of business? The narrower question presented is whether this heavier burden may be imposed by a form of tax "not peculiarly applicable to corporations." That is, by a tax of such a character that it might have been extended to individuals if the legislature had seen fit to do so.

The equality clause does not forbid a State to classify for purposes of taxation. Discrimination through classification is said to violate that clause only where it is such as "to preclude the assump-

tion that it was made in the exercise of legislative judgment and discretion." *Stebbins* v. *Riley*, 268 U. S. 137, 143. In other words, the equality clause requires merely that the classification shall be reasonable. We call that action reasonable which an informed, intelligent, just-minded, civilized man could rationally favor. In passing upon legislation assailed under the equality clause we have declared that the classification must rest upon a difference which is real, as distinguished from one which is seeming, specious, or fanciful, so that all actually situated similarly will be treated alike; that the object of the classification must be the accomplishment of a purpose or the promotion of a policy, which is within the permissible functions of the State; and that the difference must bear a relation to the object of the legislation which is substantial, as distinguished from one which is speculative, remote or negligible.[4] Subject to this limitation of reasonableness, the equality clause has left unimpaired, both in range and in flexibility, the State's power to classify for purposes of taxation. Can it be said that the classification here in question is unreasonable?

The difference between a business carried on in corporate form and the same business carried on by natural persons is, of course, a real and important one. As was stated in *Flint* v. *Stone-Tracy Co.*, 220 U. S. 107, 161-162, "it could not be said . . . that there is no substantial difference between carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals." Because of this difference Congress

[4] See Missouri Pacific Ry. Co. v. Mackey, 127 U. S. 205, 209-210; Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232, 237; Pacific Express Co. v. Seibert, 142 U. S. 339, 350-355; Gulf, Colorado & Santa Fe Ry. Co. v. Ellis, 165 U. S. 150, 155-160; Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293-296; Orient Insurance Co. v. Daggs, 172 U. S. 557, 562-564; Atchison, Topeka & Santa Fe R. R. Co. v. Matthews, 174 U. S. 96, 104-110; Muller v. Oregon, 208 U. S. 412, 421-422; Southwestern Oil Co. v. Texas, 217 U. S. 114, 125-127; Quong Wing v. Kirkendall, 223 U. S. 59, 62-63; Fort Smith Lumber Co. v. Arkansas, 251 U. S. 532, 535-536; Watson v. State Comptroller, 254 U. S. 122, 124-125; Heisler v. Thomas Colliery Co., 260 U. S. 245, 254-258.

has repeatedly discriminated against incorporated concerns and in favor of the unincorporated. The Corporation Tax Act of August 5, 1909, c. 6, § 38, 36 Stat. 11, 112, imposed a tax of one per cent on the net income of corporations when a corresponding tax was not imposed upon the income of individuals. Since the adoption of the Sixteenth Amendment the net income of both corporations and individuals has been subjected to taxes of the same nature, but the tax imposed has discriminated heavily against at least many of the businesses which are incorporated.[1]

The imposition of the heavier tax on corporations by means of an annual tax in the form of a franchise tax declared to be for the privilege of doing business in corporate form is common, and since *Home Insurance Co.* v. *New York*, 134 U. S. 594, 606, 607, the validity of such a tax has not been questioned. This heavier burden the State may impose by means of an annual franchise tax in addition to the ordinary property and excise taxes imposed upon all persons, natural and artificial. Or it may impose the heavier burden by means of a franchise tax which will be the sole tax upon the corporation. That is, it may make the franchise tax so high as to include both the tax representing the special privilege of doing business in corporate form and the equivalent for taxes borne by natural persons engaged in the same occupation. Few propo-

[1] Under the War Revenue Act of October 3, 1917, c. 63, §§ 1, 4, 40 Stat. 300, 301, 302, the normal tax on individuals was 4%, while that on corporations was 6%. The Revenue Act of 1918, c. 18, §§ 210, 230, 40 Stat. 1057, 1062, 1073, imposed on individuals a normal tax of 12% for 1918 and 8% thereafter, with additional rates of 6% and 4% respectively; the rate on corporations was 12% for 1918, 10% thereafter. The excess profits tax imposed by § 301 of the same act, 40 Stat. 1067, was applied only to corporations. Under the Act of 1921, c. 136, §§ 210, 216, 42 Stat. 227, 232, the rate on individuals was 5%, with a sub-normal rate of 4%, whereas the rate on corporations was to be 10% for 1921 and 12½% for following years. The Act of June 2, 1924, c. 234, §§ 210, 226, 43 Stat. 253, 264, 282, lowered the normal rate on individuals to 3%, with sub-normal rates of 2% and 4%, but made no change in the rate to be paid by corporations. The Act of February 26, 1926, c. 27, §§ 210, 230, 44 Stat. 9, 21, 30, further lowered the rate on individuals to 2%, with sub-normals of 1½% and 3%, but raised the rate of the corporation income tax to 13% for 1925 and 13½% thereafter.

The Report of the Secretary of the Treasury for 1927, p. 48, states: "If we include the tax paid by individuals on the dividends received from corporations, the rate of tax on net corporate income is 17.37 per cent, whereas had all the corporations been taxed as partnerships the average rate of tax on the net income would have been 9.1 per cent."

sitions are better settled than the rule that, in determining whether a state tax violates the Federal Constitution, we are to look at the operation or effect of the tax and not at its name or form. *Clark v. Titusville*, 184 U. S. 329, 333-334; *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 571; *Interstate Busses Corporation v. Blodgett*, No. 197. Compare *Atchison, Topeka & Santa Fe R. R. Co. v. Matthews*, 174 U. S. 96, 103. Since a State is permitted to impose upon the corporation more than a pro rata share of the common burden of taxation, I find nothing in the Federal Constitution which prohibits it from adopting any of the familiar kinds of taxes as the means of the heavier imposition. Surely, there is nothing inherently objectionable in the long established, commonly used gross earnings tax, which should prevent its being selected for that purpose.

Why Pennsylvania should have chosen to impose upon corporations a heavier tax than upon individuals or partnerships engaged under like circumstances in the same line of business, or why it should have selected this particular form of tax as the means of doing so, we have no occasion to enquire. The State may have done this because, in view of the advantages inherent in corporate organization, the Legislature believed that course necessary in order to ensure a just distribution of the burdens of government. In *Flint v. Stone Tracy Co.*, 220 U. S. 107, 162, this Court listed the advantages which justify the imposition of special taxes on corporations: "The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships."[6]

[6]This reason for heavier taxation of corporations was stressed in Congress both in the debate on the proposed amendment to the War Revenue Bill of 1898 taxing corporations on their gross receipts and in the debate on the corporation tax amendment to the Tariff Bill of 1909. See 31 Cong. Rec. 4964, 5092, 5101; 44 Cong. Rec. 4217. Senator Root stated: "My own state has for many years grouped all corporations within its borders, with certain specific exceptions, in a class upon the revenues of which it imposes a tax imposed on no other members of the community. And it is a late day for us to be told that there is no right in the United States to adopt this old, familiar, general basis of classification for the purpose of imposing an excise tax. It

In Pennsylvania the practice of imposing heavier burdens upon corporations dates from a time when there, as elsewhere in America, the fear of growing corporate power was common. The present heavier imposition may be a survival of an early effort to discourage the resort to that form of organization. The apprehension is now less common. But there are still intelligent, informed, public minded and civilized persons who believe that the rapidly growing aggregation of capital through corporations constitutes an insidious menace to the liberty of the citizen; that it tends to increase the subjection of labor to capital; that, because of the guidance and control necessarily exercised by great corporations upon those engaged in business, individual initiative is being impaired and creative power will be lessened; that the absorption of capital by corporations and their perpetual life, may bring evils similar to those which attended mortmain; that the evils incident to the accelerating absorption of business by corporations outweigh the benefits thereby secured; and that the process of absorption should be retarded. The Court may think such views unsound. But obviously, the requirement that a classification must

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is founded upon reason, or, and not alone upon authority." 44 Cong. Rec. 4007-4008.

The states, too, have acted upon this theory. See Annual Report of the Attorney of New York, 1902, pp. 15-17; Communication of the Secretary of State and the Attorney General of Kansas relating to the bill for an annual franchise tax, 1911.

In proposing the enactment of a tax of one shilling in the pound on the profits and income of companies with limited liability, April 12, 1870, the Chancellor of the Exchequer said: "I justify it on much broader grounds. Companies incorporated with a limited liability enjoy privileges and conveniences by virtue of the law for which they may well be asked to pay some annual stipend." The statement is quoted in Report of the Secretary of the Treasury for 1871, p. 47.

"A commission appointed pursuant to joint resolution of the Legislature of Pennsylvania reported in 1865: "Corporations in this State are very numerous and very powerful. They have not only drawn within their control an immense amount of capital, but they have drawn within their power the entire commerce of the State. . . . The franchises of corporations are property, and the legitimate subject of taxation; in fixing a tax upon corporations those extraordinary privileges their franchises constitute the first grounds of the commonwealth's claim to contribution, and in that consists her right to discriminate in favor of the public." Shortly after this report the Legislature passed the Act of April 30, 1864, P. L. 518, the first of the special taxes on corporations which have since formed an integral part of the revenue system of the State.

be reasonable does not imply that the policy embodied in the classification made by the legislature of a State shall seem to this Court a wise one. It is sufficient for us that there is nothing in the Federal Constitution which prohibits a State from imposing a heavier tax burden upon corporations organized for the purpose of engaging exclusively in intrastate commerce; and that there is nothing inherently objectionable in the instrument which Pennsylvania selected for imposing the heavier burden—the gross receipts tax.

For these reasons, I should have no doubt that the statute of Pennsylvania was well within its power, if the question were an open one. But it seems to me that the validity of such legislation has been established by a decision of this Court rendered after much consideration. The contention here sustained differs in no essential respect from that made and overruled in *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 161. There, as here, the tax was imposed merely because the owner of the business was a corporation, as distinguished from an individual or a partnership. There, as here, the character of the owner was the sole fact on which the distinction was made to depend. There, as here, the discrimination was not based on any other difference in the source of the income or in the character of the property employed. The cases differ in but two respects, neither of them material. In the *Flint* case the tax was on net income while here it is on gross receipts; and the *Flint* case arose under the Fifth Amendment while the present case arises under the Fourteenth. But a tax on net income is no more "peculiarly applicable to corporations" than is a tax on gross receipts; and in the *Flint* case it was distinctly ruled that "even if the principles of the Fourteenth Amendment were applicable to the present case", the tax must be upheld. More recently in *Fort Smith Lumber Co.* v. *Arkansas*, 251 U. S. 532, 534, the validity of a state statute discriminating against corporations was sustained, and it was said that "a State may have a policy in taxation," and that "a discrimination between corporations and individuals with regard to a tax like this cannot be pronounced arbitrary, although we may not know the precise ground of policy that led the State to insert the distinction in the law." Compare *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 126. In my opinion, the judgment of the Supreme Court of Pennsylvania should be affirmed.

Mr. Justice HOLMES concurs in this opinion.

# SUPREME COURT OF THE UNITED STATES.

No. 139.—October Term, 1927.

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| Quaker City Cab Company, Plaintiff in Error, vs. Commonwealth of Pennsylvania. | In Error to the Supreme Court of Pennsylvania. |

[May 28, 1928.]

Mr. Justice Stone, dissenting.

That businesses carried on in corporate form may be taxed while those carried on by individuals or partnerships are left untaxed, was the rule broadly applied under the Fifth Amendment in *Flint v. Stone Tracy Company*, 220 U. S. 107, and I can see no reason for not applying it here under the Fourteenth Amendment as well. It is no objection to a taxing statute that the classification is based on two distinct elements—here the doing of business in a corporate form, upheld in *Flint v. Stone Tracy Co.*, *supra*, (and see *Home Insurance Co. v. New York*, 134 U. S. 594, *Fort Smith Lumber Co. v. Arkansas*, 251 U. S. 532,) and the character of the business done as distinguished from other classes of business, upheld in *Southwestern Oil Co. v. Texas*, 217 U. S. 114, *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, *Heisler v. Thomas Colliery Co.*, 260 U. S. 245. For it was decided in *Stebbins v. Riley*, 268 U. S. 137, that such a combination of two permissible bases of classification may itself be made the basis of a classification.